

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIABALFOUR BEATTY CONSTRUCTION,
LLC,

Plaintiff,

vs.

ASPEN SPECIALTY INSURANCE
COMPANY,

Defendant.

CIVIL ACTION
FILE NO. 2023CV380018**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff Balfour Beatty Construction, LLC (“Balfour Beatty”) files this Complaint against Defendant Aspen Specialty Insurance Company (“Aspen”), showing the Court as follows:

Parties

1. Balfour Beatty is a limited liability company organized and existing under the laws of Delaware with its principal place of business in Texas.
2. Aspen is an insurance company organized and existing under the laws of North Dakota with its principal place of business in Connecticut.

Jurisdiction and Venue

3. This Court has subject matter over this action, and this Court has personal jurisdiction over Aspen.
4. Venue is proper in this Court.

Factual Background**The Underlying Action**

5. On October 8, 2020, Salus 33 Peachtree Place, LLC (“Salus 33”) sued Balfour Beatty in civil action styled *Salus 33 Peachtree Place, LLC v. Balfour Beatty Construction, LLC*

EXHIBIT

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and *HICO Concrete, Inc.*, Case No. 2020-CV-341255, Superior Court of Fulton County, Georgia (the “Underlying Action”).

6. In the Underlying Action, Salus 33 asserts claims for breach of contract and negligent construction against Balfour based on the construction of a project that included a five-story building (“Project”).

The Policy

7. Aspen issued Excess Liability Insurance Policy No. CX002GT14 for the policy period of September 15, 2014 to March 15, 2017 to named insured Wood Partners.

8. The Policy was issued as part of an OCIP for the Project.

9. Balfour Beatty qualifies as an insured under the terms and conditions of the Policy.

10. The Policy requires Aspen “to pay on behalf of [Balfour Beatty] those amounts of Loss for which coverage is provided under the definitions, terms, conditions, limitations and exclusions of the Controlling Underlying Insurance in effect at the inception of this Policy and which exceeds the total Limits of Liability of the Underlying Insurance Limit set forth in Items 4 (A) and 4 (B) of the Schedule of Underlying Insurance of this Policy.”

Count I
(Declaratory Judgment)

11. Balfour Beatty incorporates by reference the allegations set forth in Paragraphs 1 through 10 above.

12. This claim seeks declaratory relief against Aspen, requesting that the Court declare the rights of Balfour Beatty relative to the Policy.

13. Aspen is contractually obligated to indemnify Balfour Beatty, up to its policy limits, for all reasonable and necessary costs that Balfour Beatty becomes obligated to pay for the Underlying Action.

14. Because Aspen has failed to acknowledge its coverage obligation, there exists an actual controversy between it and Balfour Beatty, entitling Balfour Beatty to a declaration of rights and further relief.

15. A declaration of Balfour Beatty's rights would alleviate much of the uncertainty facing Balfour Beatty with respect to whether it will have insurance coverage for all amounts that it becomes legally obligated to pay for the Underlying Action.

16. Balfour Beatty has fulfilled its contractual obligations under the Policy and has satisfied all conditions precedent to coverage under the Policy.

17. Balfour Beatty requests that the Court declare that Aspen is contractually obligated, subject to its policy limits, to indemnify Balfour Beatty for all reasonable and necessary future costs that Balfour Beatty becomes legally obligated to pay for the Underlying Action.

WHEREFORE, Balfour Beatty respectfully requests that the Court enter judgment in its favor and against Aspen as follows:

- a. A declaration that:
 - i. The Policy was in full force and effect at all times relevant to the Underlying Action.
 - ii. All reasonable and necessary costs that Balfour Beatty becomes legally obligated to pay for the Underlying Action constitute a covered loss under the Policy.
 - iii. No exclusions or other limitations of coverage are applicable to the loss.
 - iv. No conditions of the Policy eliminate coverage in this action.
- b. Such other relief as the Court deems just and proper.

JURY DEMAND

Balfour Beatty demands a jury trial on all issues and counts so triable.

Respectfully submitted, this 11th day of May, 2023.

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